

**IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

|                                 |   |                             |
|---------------------------------|---|-----------------------------|
| ELMER CAMPBELL, <i>et al.</i> , | ) |                             |
|                                 | ) |                             |
| Plaintiffs,                     | ) | CIVIL ACTION NO. C-1-01-527 |
|                                 | ) |                             |
| v.                              | ) | JUDGE: BECKWITH             |
|                                 | ) | MAGISTRATE JUDGE: HOGAN     |
| INTERNATIONAL PAPER,            | ) |                             |
| SUN CAPITAL PARTNERS, INC.,     | ) |                             |
| SMART PAPERS LLC,               | ) |                             |
|                                 | ) |                             |
| Defendants.                     | ) |                             |
| _____                           | ) |                             |

**DECLARATION OF C. DERYL COUCH**  
**IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

I, C. Deryl Couch, declare as follows:

1. I am the Senior Vice President and General Counsel of Sun Capital Partners, Inc. (hereafter "Sun Capital Partners"), and I am an individual investor in Sun Premium Paper Partners, L.P. (hereafter "Sun Premium Paper Partners").

2. I also serve as Vice President and Assistant Secretary of numerous companies affiliated with Sun Capital Partners, including Smart Papers, LLC (hereafter "Smart Papers"). I do not participate in the day-to-day management or operation of Smart Papers, but on occasion assist Smart Papers in connection with strategic opportunities.

3. As an attorney, I participated in the formation of Sun Premium Paper Partners and Smart Papers. I am personally aware of the ownership, management, and general operations of Sun Capital Partners, Sun Premium Paper Partners, and Smart Papers, and the relationships between and among these entities.

4. I participated in a deposition in this case on August 28, 2003. This Declaration supplements that deposition, and addresses several areas that Plaintiffs' counsel chose not to explore.

5. Sun Capital Partners is a private investment firm headquartered in Boca Raton, Florida. Sun Capital Partners does not itself make investments or acquisitions. Sun Capital has over 225 affiliated companies, and certain of these affiliates make investments and acquisitions. Generally, certain of these affiliates acquire and invest in companies that are underperforming, in bankruptcy, and/or experiencing other operational or financial challenges, with the expectation that the companies can be turned around to become economically viable stand-alone entities. Affiliates of Sun Capital Partners have invested in diverse industries such as paper and packaging, filmed entertainment, food and beverages, automotive parts, consumer products, financial services, healthcare, media and communications, building products, telecommunications, technology, retailing and catalogs, and manufacturing.

6. Sun Premium Paper Partners is the Sun Capital Partners' affiliate that owns Smart Papers. Sun Premium Paper Partners consists of over 30 partners (both individuals and entities) who own 100 percent of Sun Premium Paper Partners, which in turn owns 100 percent of Smart Papers. Sun Premium Paper Partners is a passive investment partnership. Although it wholly owns Smart Papers, Sun Premium Paper Partners has no employees and does not exercise any day-to-day control over the operation, management, or labor or employee relations of Smart Papers.

7. Sun Capital Partners, which has been named as a defendant in this case, does not own, operate, or manage Smart Papers. Sun Capital Partners and Smart Papers

have separate offices, employees, employee benefits, accounts, payroll, and employment policies. Sun Capital Partners plays no role in the day-to-day operation or management of Smart Papers, exercises no control over Smart Papers' labor and employee relations, and does not make any day-to-day employment decisions on behalf of Smart Papers.

8. There is no interrelation of operations between Sun Capital Partners and Smart Papers. There are no common offices, no common record keeping, no shared bank accounts, no common payroll and accounting, no common equipment, and no interchange of equipment between Sun Capital Partners and Smart Papers. Sun Capital Partners is a private investment firm (with approximately 35 employees) with offices in Boca Raton, Florida (headquarters), New York City, and Los Angeles. In contrast, Smart Papers is a company that was formed on or about December 12, 2000 to acquire, own, and operate a paper mill in Hamilton, Ohio – the Hamilton B Street Mill. Smart Papers operates the Hamilton B Street Mill in Hamilton, Ohio and does not have any offices in Boca Raton, Florida. Smart Papers produces premium specialty paper, and employs several hundred employees in Hamilton, Ohio. Smart Papers is an independent affiliate of Sun Capital Partners and operates in a separate location, with separate employees, and in an entirely separate industry. Sun Capital Partners and Smart Papers are separate legal entities and, among other things, file separate tax returns.

9. This is no centralized control of labor relations and personnel between Sun Capital Partners and Smart Papers. As noted above, Sun Capital Partners employs approximately 35 employees performing investment-related services in Boca Raton, New York City, and Los Angeles, and Smart Papers employs hundreds of employees performing paper manufacturing services in Hamilton, Ohio. Among other things, Smart

Papers determined – and continues to determine -- how many employees to hire at the Hamilton B Street Mill, whom should be offered jobs, what functions they will perform, and what their terms and conditions of employment shall be. Sun Capital Partners does not have or exercise any role in the labor relations or employment policies of Smart Papers, and does not have or exercise any role in hiring, firing, or determining the terms and conditions of employment for Smart Papers' employees. Sun Capital Partners played no role in the decisions to hire or not hire any of the plaintiffs in this litigation, or whether to place them into certain positions. Those decisions were made exclusively by Smart Papers in Hamilton, Ohio.

10. Smart Papers has separate independent management located in Hamilton, Ohio, including Chief Executive Officer Timothy Needham, Chief Operations Officer Daniel Maheu, Chief Financial Officer Bruce Silberman, and Vice President of Human Resources and General Counsel Milton Lewis. None of these individuals works for Sun Capital Partners. Smart Papers' management in Hamilton, Ohio, determined – and continues to determine – among other things, what products to produce, what level of production is appropriate, what equipment to purchase, how much and what type of inventory to maintain, which functions to perform in-house and which to subcontract, staffing levels, whether new hires, terminations, disciplines or layoffs are necessary, and all day-to-day operational, business, and employment decisions.

11. Notwithstanding the above, four officers of Sun Capital Partners are on the Board of Managers of Smart Papers – namely, Marc Leder and Rodger Krouse (who own 100% of Sun Capital), Steve Liff (Principal and Vice President of Sun Capital Partners), and Bud Terry (Managing Director of Sun Capital Partners). Messrs. Leder, Krouse,

Liff, and Terry are also on the Board of several of the over 225 other companies affiliated with Sun Capital Partners. These four non-employee members of the Board of Managers of Smart Papers perform the traditional functions of a Board of Directors such as financial review and policy oversight, but do not control or participate in the day-to-day operations or management of Smart Papers, and have no role in day-to-day labor and employment decisions. For example, the Board of Smart Papers meets approximately every calendar quarter (in various locations such as Hamilton, Chicago, and Boca Raton), receives financial and operational reports from the independent management of Smart Papers in Hamilton, Ohio, and provides policy guidance on matters such as financing, profitability, and strategic decisions.

12. When Smart Papers initially was formed on December 12, 2000, it had no employees or assets. On or about December 29, 2000, Smart Papers entered into an Asset Purchase Agreement with Champion International Corporation (then wholly owned by International Paper) for the purchase of substantially all of the assets of the Hamilton B Street Mill. The asset sale to Smart Papers closed on or about February 9, 2001. For approximately three months, from December 2000 to February 2001, Steve Liff served as Smart Papers' chief business negotiator for the purchase of the Hamilton B Street Mill, and chief negotiator for tax credits from the City of Hamilton, Ohio. In addition, during this time Bud Terry served as the temporary Chief Executive Officer of Smart Papers. Messrs. Liff and Terry served in these capacities for only a few months, and only during the initial formation of Smart Papers. Neither Mr. Liff nor Mr. Terry were involved in the day-to-day management or operation of Smart Papers after this initial start-up period, and at no time have been involved in making any day-to-day labor and employment

decisions for Smart Papers, such as which former IP employees should be hired or not hired.

13. On or about January 11, 2001, Smart Papers entered into an Employment Agreement with Mary Rita Weissman to serve as Smart Papers' Acting Director of Human Resources. Ms. Weissman was hired to develop and implement plans for interviewing, evaluating, and hiring the initial workforce for Smart Papers at the Hamilton B Street Mill. Mr. Liff (in his capacity as Vice President for Smart Papers) signed the Employment Agreement hiring Ms. Weissman, but neither Mr. Liff nor any employee of Sun Capital Partners had any role in the decisions to hire or not hire any of the employees of Smart Papers, including the plaintiffs in this litigation. In addition, after the sale of the Hamilton B Street Mill to Smart Papers was consummated in February 2001, neither Mr. Liff nor any employee of Sun Capital Partners played any role in the day-to-day operations or management of Smart Papers, including but not limited to labor and employee relations.

14. On or about January 22, 2001, Smart Papers entered into a Consulting Agreement with Dan Maheu. Among other things, Mr. Maheu began working full-time for Smart Papers and was responsible for assisting Smart Papers in finalizing the asset sale transaction with International Paper, preparing for Smart Papers' operation of the Hamilton B Street Mill, establishing new terms and conditions of employment for the persons who would be offered employment with Smart Papers, and establishing and maintaining satisfactory relations with customers and vendors. It is my understanding that Mr. Maheu had intimate knowledge of the management and operation of the Hamilton B Street Mill. Mr. Maheu had been the Mill Manager for several years, while

the Hamilton B Street Mill was owned by Champion International and then International Paper.

15. In early February 2001, Smart Papers was making preparations to finalize the purchase of substantially all of the assets of the Hamilton B Street Mill. The asset purchase was consummated on February 9, 2001. Shortly after the closing, Smart Papers provided letters to former employees of International Paper, either offering or not offering them a job with Smart Papers. Although the letters were provided under Mr. Terry's name in his capacity as Chief Executive Officer of Smart Papers, Mr. Terry had no role in preparing the letters and was not involved in any way with the decisions to hire or not hire any of the employees of Smart Papers. It is my understanding that all the hiring decisions were made as a result of recommendations by Mary Rita Weissman (Acting Director of Human Resources for Smart Papers) to Dan Maheu. In addition, after the sale of the Hamilton Mill to Smart Papers, Mr. Terry played no role in the day-to-day operations or management of Smart Papers, including but not limited to labor and employee relations. On or about February 26, 2001 Smart Papers hired Timothy Needham as its CEO, and Mr. Terry's brief tenure as temporary CEO came to an end.

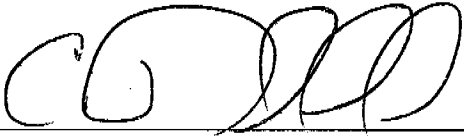
16. In addition to having separate businesses and operations, separate locations, separate labor and employee relations, and separate day-to-day management, Sun Capital Partners and Smart Papers have never had a principal-agency relationship. Among other things, Sun Capital Partners is a separate legal entity that neither owns nor operates the Hamilton B Street Mill. When Smart Papers made the employment decisions at issue in this case, those decisions were not made by Sun Capital, but it is my understanding that they were made exclusively by employees of Smart Papers (Mary Rita

Weissman recommendations to Dan Maheu), who were acting solely on behalf of Smart Papers and not on behalf of any other entity, including Sun Capital Partners.



I have read the foregoing and declare under penalty of perjury that it is true and correct to the best of my knowledge, information and belief.

September 29, 2003  
Date

  
C. Deryl Couch